

The Referee

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Martin Abramson believed that very small, innocuous and seemingly trivial acts were the key to understanding the very nature of an individual. He further believed that when a person observed trivial acts . . . sometimes even a single trivial act . . . that it was possible to predict exactly how a particular person would behave in many, many circumstances, some of these circumstances complex, some of them important.

How or where he formed those beliefs he could not say, but probably his mother had a lot to do with it. Most would call her an inactive woman. She read . . . she watched . . . little else. Often, she would leave her apartment early in the morning and walk to a nearby park where she spent the day sitting on a bench.

Martin might ask her: "What are you doing?"

"Nothing, Martin."

"Nothing?"

"I'm watching the people," she would say with exasperation.

"And?"

"And nothing, Martin."

"Nothing?"

"Nothing."

She did not stare. She barely appeared to be paying attention. But she was . . . Martin knew that she was.

And because eleven-year old boys still enjoyed the company of their mothers, Martin watched, too.

There was nothing special about the people Martin and his mother watched. There was nothing special about what they did.

Miriam seldom commented on the people she watched. Once in a while she would say something like: "That's not a very nice woman."

Martin noticed a tall, slender woman in a long black tailored cloth coat.

"Why?" Martin might ask.

"Just isn't."

"Now how can you say that?"

Miriam did not reply.

"Mom?"

Miriam said nothing.

When all there was to do was watch ordinary people doing ordinary things, one might notice small things.

One day Martin saw a young mother slap her small child. A small thing. The child cried.

Three years later, he saw the same thing: A young woman slap a small child.

The next day he realized something – a small thing. The second child did not cry.

Many years later when Martin graduated from the University of Chicago Law School, his first job was as a juvenile court referee. At that time in Michigan, referees presided over cases not important enough to be heard by judges.

He listened to many, too many, cases of slapped children. Those lightly slapped, those moderately slapped, and those slapped about. He heard the testimony of the children, the mother, the sister, the

next door neighbor, the woman on the bench that observed it all, the slapper, the slapped, the admitter, the denier, the apologizer, and the woman who stood up and shouted at him, "She's my goddam child and if you don't like it, you can . . ."

He remembered the children in the park and he remembered something else. The first child he saw slapped cried; the second did not. Also he knew something: the second child did not cry because she was used to being slapped.

He thought then about the mother . . . the one who shouted at him "She's my goddam child . . ."

He then remembered other things about the two children he'd seen slapped. He remembered that the first mother hesitated before delivering one blow with the front of her hand whereas the other mother hesitated not at all before delivering not one, but three sharp blows: backhand, forehand, backhand. He remembered, too, how the first mother reacted after she struck her child and the child began to scream. The mother leaned toward the child as though ready to console her, she hesitated, backed away, let her child keep screaming. She looked around and saw Martin and his mother sitting on the bench. Then, only slightly, she hung her head, picked up her child . . . hugged . . . and consoled him; then walked away.

Martin had observed all of this, but at that time he had seen nothing.

* * *

Eventually, Martin would develop the ability to understand each and every act: the reason a head was hung only slightly . . . the amount of time between the first and second slap and what that meant, the way the head was tilted (or held straight) as the mother observed the observer after she slapped her child.

* * *

The woman who shouted at Martin: "She's my goddam child and if you don't like it . . ." just happened to be the wife of a popular member of Congress, not a Senator but a member of the House.

Martin had been a juvenile court referee for less than a year when a case was assigned to him that, in retrospect, many believed should have gone before a judge. Referees presided over routine matters; judges presided over serious cases. In the grinder-like imprecision of juvenile justice, where courtrooms were filled by the desperate, the destitute, and the delirious, the random outcomes seldom provoked more than a shrug.

The nine-year old girl that stood before Martin with chocolate still smeared across her upper lip had been brought before him by the security guard at Marshall's department store. The large black man stuffed into his uniform seemed almost apologetic.

"It was only a few candy bars," he began, "but it's company policy . . ."

Martin cut him off: "and the parents . . . have they been contacted?"

"Don't know who they are," the security guard said, and added "we're working on it."

"I'll remand her to juvenile hall and put this on the calendar for tomorrow. Have some information for me by then."

It all began in such a routine manner.

But each of the next three days the girl stood before Martin and each time there was no answer to the question: who were the parents?

The child would not speak: not to Martin, not to the security guard, not to juvenile court personnel.

However, at the fifth hearing, a parent appeared. She came into the courtroom where she stood tall before Referee Abramson on Lord

and Taylor high heels and did not wait for Martin to call the case before she answered, "I'm Hilary Washburn, and I've come to get Heather and take her home."

The name Washburn meant nothing to Martin when he replied: "I'm sorry Mrs. Washburn, but that's not exactly the way things work around here. Please have a seat . . . you're number six on the docket today."

It was usual that nine-year old girls who stole candy bars were simply released from custody after a minimal – maybe two minutes – "hearing," the court preferring to devote itself to murder, rape, and sensational instances of child abuse.

Aside from the fact that the child wouldn't speak, Martin had noticed something else: when the mother announced her intention to take the child home, the girl slunk into herself. This was unusual behavior even for those children that knew a good whipping awaited them upon release by the court and were willing to pay that price rather than spend another day in juvenile hall.

As well it was the hair. It was lank and dull. Even maybe some had fallen out.

* * *

Being fired by juvenile court was probably the best thing that ever happened to Martin Abramson. The presiding judge waited a judicious (and awkward for him) three months after the headlines in the *Detroit Free Press* appeared:

Juvenile Court Referee
Removes Congressman's
Child From Her Home

Martin had never considered it a brave act; he considered it the right thing to do. He never even hesitated. One undisputed medical

conclusion plus some strong evidence of a very strange frequent disciplinary technique did not save Martin Abramson's job. The hospital to which Martin had admitted the child for a medical evaluation had concluded that Heather Washburn was seriously malnourished. They further "believed" that she had regularly been ingesting huge amounts of salt . . . more salt than anyone would consume voluntarily. After he was removed from the Washburn case, a newly appointed juvenile court referee would return Heather Washburn to the care of her parents; this occurred before Martin Abramson could even cash his first unemployment check.

But soon the phone began to ring. People wanted to hire Martin Abramson. Nobody from the big-status/small-integrity downtown law firms ever called, but maverick sole practitioners started referring cases to Martin . . . often cases they were too timid to take on themselves. As well, people called and usually they were the people who the wheels of justice ground into dust, people who couldn't afford lawyers, but occasionally one called who had enough money to afford justice or, more accurately, to beat justice.

As Martin Abramson began to drift toward running his law office from his home in Ann Arbor, continually he faced a dilemma: those who could afford to pay were usually those trying to beat justice, whereas those who could not pay were those trying to defeat that grand tyranny sold to the American public and called justice. Only occasionally did that good man who needed a lawyer and who could also afford one arrive at his door; there were simply not enough of these to support even a low overhead law firm run from his home.

Al Brown was the first compromise. He was referred to Martin by a former classmate, a labor lawyer representing Al Brown regard-

ing his “employment problem” before the National Relations Board. Al Brown was the president of the union at the Ford Motor Company Truck Division. This “employment problem” Brown had arose from the same event as the criminal problem Martin was solicited to contain. Convicted felons weren’t allowed to run for president of the UAW and since Jimmy Hoffa had been newly housed in an undisclosed land-fill, Al Brown had dreams of following in Hoffa’s footsteps . . . above ground . . . but first there was a little problem that Mr. Brown needed resolved.

Al Brown was a scripted human being . . . from the beer belly, the cigars, the diamond pinky ring, to the black Cadillac and the leggy blonde wife pumped full of silicone top and bottom. As he handed Martin thirty-five hundred dollar bills, he parted with scripted words: “Where’s a goddam steak house in this shit-hole town? I could eat me a fuckin’ cow.”

Al Brown called Martin every day. He had good reason to worry. The day of his arrest, sitting in a Detroit jail cell, Al Brown had signed a six-page confession, sweating ignition modules as he wrote. Al had a habit: on Sundays and holidays when the Ford Trucking Plant in Dearborn, Michigan, was closed, Al and a few other union leaders would arrive at the plant in a fleet of Cadillacs. They would leave with car trunks bursting with ignition modules, still in unopened boxes labeled Motorola, the parts having not yet been admitted to and recorded in Ford’s inventory. Thirty minutes later, the train of Cadillacs would pull up at a gas station where these union executives would load the ignition modules into a truck. Ned Ireland always paid cash.

One day things didn’t work out. Ned the Fence, had a few legal problems of his own, and so in return for forgiveness, he had made

some new friends, all of them members of the Organized Crime Strike Force. Ned's new friends waited inside the gas station as Al and his friends loaded ignition modules into the truck. As Ned Ireland began sliding away from Al, Al saw twenty large men in blue running toward him. His reaction was immediate.

"Ah, shit!"

Moments later, he and the others were in handcuffs.

So, every evening Al Brown, still sweating ignition modules, called Martin Abramson. On the door leading to his cellar, next to the kitchen phone, Martin Abramson scotch taped a piece of paper. After each hand-holding call, Martin recorded the length of the call and the amount owed . . . each one-tenth of an hour equal to \$12.50, premium legal fees at that time.

The day his case was dismissed by the judge, Al Brown lit up a cigar right in the court-room. He walked up to Ned the Fence, stuck out his hand, and, as Ned shook it, Al forgave him with these words: "You're a dead man . . . you cocksucker." Martin had successfully argued to the court that there was no victim, that there was no evidence Motorola owned the modules since nobody came to court to establish they were taken from Motorola. Fact, is, they weren't taken from Motorola; they were taken from the Ford plant. But, too, nobody saw them taken from Ford and since they hadn't yet been inventoried, nobody could establish Ford even possessed these particular ignition modules let alone owned them.

"But Mr. Abramson," the court said. "Your client has signed a six-page confession. Certainly there is enough evidence to go to a jury."

Abramson handed the court a page of case citations.

"Your Honor, in this state when the prosecutor has no evidence of a corpus delicti independent of the confessions, the confession is inadmissible."

The gavel came down. The word dismissed was uttered. The cigar was lit. Martin Abramson would never see Al Brown again, and he would never receive a check for unpaid legal fees of \$625.00.

From this experience, Martin Abramson learned the art of discrimination. Skilled lawyers find two kinds of cases tempting: those that pay and those that make it into the newspapers.

When Martin Abramson got a phone call from Gerald Israel, he was surprised. He had never liked . . . never respected . . . his former criminal law professor. The man held social values that made Martin cringe.

"Potter Stewart called me . . ."

Martin Abramson recognized the name of someone else he held no respect for, a right-wing justice of the United States Supreme Court.

". . . I know we have had our phil-o-soph-i-cal differences, Martin . . ."

Martin was thinking the differences were not philosophical but that the difference was between the decent and the indecent. Because he was more riled than flattered at his ex professor's call, he had no idea what was coming.

"The case is *United States versus Payne*. The court asked me for a recommendation. Can I tell Justice Stewart you'll accept the appointment to argue it before them?"

Once it sunk in that he was being selected to argue a case before the United States Supreme Court, Martin's emotions began rocketing between joy and dread. At the moment, he didn't even know he would

be the youngest attorney ever to appear before the Supreme Court. The reason for his joy was self-evident: the invitation certified his intellectual legal superiority. The reason for his dread wasn't that he feared he might not do well; it was that he held the present Supreme Court in low esteem and certainly it would be an honor to try to persuade men of morality, but these . . .

So, when Martin said: "Let me think about it," the silence of disbelief on the other end of the line was so profound that Martin Abramson thought Professor Israel may have forever lost the power of speech.

Before the professor could hang up the phone, Martin Abramson had decided.

"I don't think so."

It was not Potter Stewart who deterred him; it was Warren Burger, the Chief Justice. And it was a small thing about Warren Burger that had flashed through Martin's mind as he made his decision. If he would never again represent a man like Al Brown, so, too, he would not appear before a man like Warren Burger in that falsely deferential demeanor that appellate advocates felt forced to adopt. Martin, that day, decided that he would not stand before those he held in low regard and utter words like "may it please the court" and "your honor."

Three days after Warren Burger was appointed to the United States Supreme Court and simultaneously anointed Chief Justice, he had traveled on an Amtrak train between Philadelphia and New York City. Although "no smoking" signs were prominently posted, that did not deter Chief Justice Burger from filling the railcar with cigar fumes of self-importance. A young porter, probably having no idea who this man was, tapped him lightly on the shoulder:

"Sir, there's no smoking in the train."

Newspapers did not report exactly how Warren Burger responded and the articles written were small, undetailed and back page; Warren Burger had had the porter fired.

A small thing. An incident. The firing of a man . . . a small, insignificant man. But it was no small thing that the well respected legal opinions of Warren Burger displayed a small-minded, nasty view of others well concealed in lofty legalese constructed by newly minted lawyers from the best schools, and these opinions seemed so very well reasoned and so very reasonable if you were not the one victimized by the effect of the rulings.

Before he quit the law, Martin Abramson represented one more client. He visited him at the jail in Detroit.

"I shot her," he said. "I am sorry . . . I don't have no money to pay you."

Leroy Covington shot not only her but her girlfriend and the man who was (at least presently) the lover to both young women.

LeRoy kneaded his cracked, caramel hands and looked down at the floor as he added:

"Certainly was a beautiful young thang . . . though she did play me for the fool."

The autopsy report described her as a 32-year old short, dark-skinned, obese black woman.

LeRoy was 63 at the time of the shooting and working two jobs. He made the mistake of returning home two hours early from his assembly line job at Ford, the line being shut down for an unexpected repair.

He didn't expect to find his girlfriend in the bedroom. He didn't expect to find Shawnee naked. He didn't expect to find her doing what she was doing to another woman. And, he certainly didn't expect to find a strange man in his bed doing what he was doing.

LeRoy Covington knew where the gun was – in the night stand.

Martin Abramson had read the police report.

LeRoy Covington had called 9-1-1 within minutes of the shooting. When the police arrived, he still had the gun in his hand. He handed them the gun; he'd shot it three times . . . three people were dead.

LeRoy Covington spoke six words to the arresting officer:

"I don't know what I done."

At their first meeting, Martin Abramson told the man, "I don't think we can win this one."

LeRoy looked right at Martin.

"I wouldn't want you to . . . just get me the best sentence you can . . . I'll plead to it."

LeRoy Covington was Martin Abramson's last client, and Martin would always after find great satisfaction that the last client he chose to represent was a good man.

II

One day while sitting in the sauna at Work Out, a small thing happened.

Martin Abramson had moved to Oregon almost 20 years earlier. In 1987, Oregon had just begun to emerge from a decade-long recession, having foolishly relied on one industry – timber – for its economic well-being. Martin paid cash for a small home in Oregon's most beautiful community. The long recession had plunged house prices so low

that the people of Oregon's most affluent community had been driven to modesty (therefore, kindness).

Work Out was the kind of gym that could not have existed in the Oregon of 1987. The incident – actually there were many incidents – would not have occurred even as late as 1995. By 2000, it could have happened. Things were happening not only in Oregon but all over America, but these things appeared odder in Oregon because Oregon had been a modest place.

So, when the small thing(s) happened in 2007, America had become a country obese with oblivion, and modest Oregon had begun to keep pace with the nation.

Lake Oswego home prices had risen by a multiple of more than 10 between 1988 and 2006. People of entitlement filled the streets with Hummers, Jaguars, and Escalades, and many of them could be seen parked in front of Work Out.

The U.S. Supreme Court was populated by lowly moral beings like William Renquist who rose to Chief Justice by interfering with minorities' ability to vote in national elections. Justice Clarence Thomas gained Senate confirmation although it was obvious that he had sexually harassed at least one female lawyer working under him, and he would go on to write many indecent legal opinions, and Justice Scalia was probably a worse human than either of these. The Vice President was morally impaired with a very bad heart, and American corporations were unabashedly stealing from the population with little fear of retribution. So, it is not surprising that small incidents were occurring everywhere.

Before the final small incident, there were two prior incidents, all of them taking place in and around the sauna at Work Out.

It was Martin Abramson's habit to warm himself in the sauna before an hour-long ride on the Stairmaster; he had been doing this five times a week for 26 years. As he sat in the sauna at Work Out, he could look through the sauna's door to watch T.V. The television was attached to the wall on a swivel base so that it could be aimed out toward the locker room or turned inward to the sauna. It was Martin's habit to exercise mid afternoon when Work Out was nearly empty. It was a small local's gym; the sauna seated two – three at best – but usually Martin occupied it alone.

On a day like any other, Martin Abramson was sitting in the sauna alternately reading the Sunday *New York Times* "Week in Review" and glancing at the T.V., which he had tuned to CNN. The locker room was empty. Martin noticed a dark-skinned man, probably in his fifties, enter the locker room, hurriedly open his locker, change into a running suit . . . appear to exit the locker room, then stop near the exit, turn around and re-enter the locker room. The man walked over to the sauna and opened the door. He appeared moderately angry standing in the open doorway addressing Martin as cold air began to chill Martin's sweating naked body. As Martin was telling the man to shut the door, the man was complaining that the television was too loud and that Martin was "disrespecting him." Martin had no idea whether this disrespect was due to the television being "too loud" or whether it was because Martin had asked the man to shut the sauna door. Further, Martin felt the television was at normal volume and could not understand why the man cared since he came into the locker room only to change his clothes and immediately left – a three-minute activity. It was a small thing . . . an aberrant small thing . . . but Martin let it pass.

Two weeks later, Martin was again in the sauna, the locker room was empty, and the same man entered the locker room. Again, the man went to his locker and changed into a running suit. As he turned away from his locker, he saw Martin sitting in the sauna. The man froze, staring . . . then glaring at Martin. Then, while not moving toward the sauna, he began waving his arms above his head as though trying to draw Martin's attention to something . . . (to himself?). Martin looked at the man and glanced about the locker room but saw nothing, only an empty locker room and this man rooted to his spot waving his arms at Martin with his head thrust aggressively forward. Martin decided to ignore this which took considerable energy as the behavior was disturbing though Martin concluded probably not dangerous.

Everyone would call Carey a "nice guy." He owned Work Out. People genuinely liked Carey. Martin Abramson had not much respect for "nice guys" because nice guys looked the other way, went along and in their docile compliance, they were passively responsible for atrocity upon atrocity. Precisely, it was a world full of nice guys that enabled the aggressive, the ugly, and the cruel to further their ends. It was the nice guys that would address a Warren Burger as Your Honor, who would look the other way as well-dressed women, slapped precious children – forehand, backhand, forehand, or fed them glasses of undiluted table salt as punishment thereby stunting even physical growth, and it was nice guys like Carey who could never understand that a killer, LeRoy Covington, was a good man.

Martin had never had a substantial conversation with Carey, so when he brought up the incident in the locker room, it took only a few moments for Cary to reveal himself as a prototypical nice guy. When

Martin described what had occurred in the locker room, Carey expressed the appropriate concern. Carey knew who this man was . . . fact is, Carey liked and respected the man although there had been prior incidents . . . one which he didn't want to discuss but there were others that he did.

It seemed that this same man had been on the exercise bike talking on his cell phone. Every piece of equipment at Work Out had the following attached to it.

PLEASE BE CONSIDERATE OF OTHER MEMBERS:

No Cell Phones in Exercise Area

Wipe Off Equipment after Use

Re-rack Your Weights Downstairs

A member complained and asked one of Work Out's employees to speak to the man, which he did. Carey told the story this way: "My employee really approached the man in the wrong way. Carey then hesitated . . . then said," Well, the man gets a little excitable but I know him . . . he's a very good person . . . he's done a lot for the community." Martin wanted to say to Carey that here is no way to approach a man like this and that Carey was wrongly misplacing upon his employee the blame for the customer's bad behavior, but Martin knew it would be useless, given that Carey, was who was Carey.

But since Martin didn't like Carey's resolution of the confrontation, he suggested something that he didn't believe . . . not for sure . . . but he was – in his former attorney manner – just probing:

"Well, I think the guy maybe . . . is . . . dangerous . . . his behavior was a bit crazy."

Carey became serious, then said: "Well, you know after the other incident . . . incidents . . . I checked with the local police. He has no

criminal record. You just have to be a little diplomatic with the man, that's all."

"Is your employee who spoke to this guy here?" . . . Martin hesitated before adding "today?"

Carey looked a little sad. "I had to let him go."

Martin knew that his own days at Work Out were numbered.

The final small thing occurred less than three weeks later. Directly across from and in front of the television set were two comfortable leather chairs and a small table with a telephone on it.

As usual, Martin was sitting in the sauna watching T.V. He was watching the Senate hearings into the firing of eight United States attorneys by United States Attorney General Alberto Gonzales. Democrats were seeking to establish the firings were done for a wrongful and illegal purpose: to interfere with ongoing corruption investigations and criminal prosecution of prominent Republicans; Republicans were "defending" Gonzales by claiming he was merely an incompetent, not a criminal. Although Martin had walked away from the legal system more than 30 years earlier when he recognized it beginning to sink toward its present level of uncensored injustice, still the details fascinated him . . . he could walk away from his own participation in it but not from understanding every ugly nuance.

So he'd watched the entire confirmation hearings of Supreme Court Justice Roberts and Justice Alito, and while he was rapt in listening to Attorney General Gonzales testifying under oath to the impossible claim that he remembered absolutely nothing about a lengthy meeting held only a few months prior wherein the dismissal of eight United States attorneys was discussed and decided, a small thing happened.

The sound on the television went silent. Seconds earlier Martin had seen a man peer furtively into the sauna. That same man was now talking on the telephone.

Martin exited the sauna wet with sweat to hear the man saying, "I'll call you back later then." The man was dialing a second number when Martin pushed the button to turn back on the television's sound.

The man on the phone wheeled about to face Martin and snarled, "I can't hear."

Martin looked right at him and copied the man's tone of voice and words: "No . . . I can't hear."

Martin returned to the hearing and the incredible Alberto Gonzales . . . the highest ranking law enforcement officer . . . United States Attorney General Alberto Gonzales.

Three days later when Martin entered the gym, Carey approached him.

"Hi, buddy, he said. "Can I talk with you a moment?"

"Sure," Martin said as Carey followed him into the locker room.

"I've had a complaint about your behavior."

"Oh?"

"From a member. He says you were rude to him . . . and pretty aggressive."

"Oh."

Carey repeated the story of the television and the telephone . . . albeit from the member's point of view.

"I told him he should have looked into the sauna to see if someone was watching before turning off the T.V.," Carey acknowledged.

"Oh," said Martin.

“He agrees he should have and has apologized . . . but your behavior is a concern.”

Martin thought about telling Carey the man did look into the sauna, but experienced attorneys knew not to argue points of right and wrong when facts were likely to be disputed and, further, there was no need to, so he said to Carey:

“Well, you know if the man weren’t a person with an elevated sense of his own self-worth . . . if he weren’t such a ‘special person’ when I did come out of the sauna and turn the television back on, he would have said something like: sorry I didn’t realize you were watching it.”

“Well, I don’t think that was the right thing for you to do.”

“I guess I think it was exactly the right thing to do. Otherwise, I would be endorsing bad behavior.”

“I guess I would ask you to behave differently in the future.”

Martin thought about it for a moment. Work Out was convenient, only blocks from his house. It was clean and the equipment was well maintained but, too, Martin knew when the only right thing to do was to walk away.

“I’m sorry, Carey, you’re a nice guy, but I just can’t do that.”

Fortunately, there exist other health clubs. ■